Supreme Court, U.S.
FILED
NOV 22 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-677

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

NEGRITO COMERCIAL, S.A.,
Petitioner

v.

SEA-LAND SERVICE, INC. and VICTORY TRANSFER CO.,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENT SEA-LAND SERVICE, INC.

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I

CORPORATE INFORMATION

Respondent Sea-Land Service, Inc., is a wholly owned subsidiary of Sea-Land Corporation, a Delaware corporation.

Additional subsidiaries of Sea-Land Corporation are the following:

Container Freight Systems, Inc. (Delaware)
Intersea Operations, Ltd. (Hong Kong)
Sea-Land Industries (Bermuda), Ltd. (Bermuda)
Sea-Land Industries U.S.A., Inc. (Delaware)
Sea Readiness, Inc. (Delaware)
Sea-Land Aircraft, Inc. (Delaware)
Tacoma Terminals, Inc. (Washington)

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To The Honorable Judges Of Said Court:

STATEMENT OF THE CASE

Petitioner, a Mexican Corporation, bought 11,000 cases of brandy in Spain. The seller delivered this brandy in eight sealed Sea-Land containers to the respondent Sea-Land Service, Inc. at Algeciras, Spain, in return for eight bills of lading calling for "house-to-house" delivery

to the petitioner in Nuevo Laredo, Mexico. [Pet. 6a-7a] The brandy was carried by ship to Houston, then overland in customs bond to Laredo, Texas, where it was held by Sea-Land's agent, the respondent Victory Transfer Co., pending presentation of bills of lading and completion of border-crossing formalities by the petitioner. [Pet. 7a]

When the petitioner did not apply for its cargo within a reasonable time, Sea-Land unloaded the brandy from Sea-Land's transportation containers and put it into storage. [Pet. 9a, 13a-15a] When the petitioner appeared, late on a Friday, it was too late to arrange customs supervision to reload the cargo that day. [Pet. 9a-10a, 15a] Petitioner's representative applied for the cargo again on Saturday, but Victory's office was not open for business. [Pet. 10a] The petitioner did not apply for the cargo again for several weeks. [Pet. 10a] It then was delivered, as the petitioner made arrangements, over a period of eight months. [Pet. 10a]

Petitioner claimed damage as a result of its cargo's not being delivered at once when demand was made on Friday. [Pet. 19a-21a] Petitioner characterizes this as a dishonor of its bill of lading. [Pet. 6] Petitioner alleged that it lost a substantial resale contract because it could not get the brandy on that date. [Pet. 21a] The district court, after a bench trial, found that the brandy could not be delivered on Friday because it had been unloaded from the containers pursuant to valid and reasonable terms of Sea-Land's bill of lading and published tariff. [Pet. 13a-14a] It found that such unloading was not in violation of the "house-to-house" agreement. [Pet. 15a] The district court further found that petitioner could have avoided loss of its resale contract in any event if

it had pursued the matter on the following Monday. [Pet. 15a]

Petitioner also claimed damage as a result of physical mishandling of the cargo by Sea-Land and its agents. [Pet. 21a] Petitioner's proof, essentially, was that some of the brandy was found broken when it reached Mexico City, but this was after the brandy had been hauled, by trucks selected by the petitioner, 700 miles from Nuevo Laredo where it had been delivered to the petitioner by Sea-Land. [Pet. 11a, 17a] The district court found this proof insufficient to establish the responsibility of Sea-Land for such damage. [Pet. 11a, 17a]

The district court made extensive findings and conclusions, denying recovery to the petitioner. [Pet. 6a-17a] The court of appeals affirmed, noting briefly its general agreement with the district court. [Pet. 5a]

SUMMARY OF ARGUMENT

The courts below correctly applied federal law because the plaintiff's action is based on a maritime contract.

The courts below found no inconsistency between the "house-to-house" provision of the bills of lading and Sea-Land's printed and published terms describing the handling of cargo not picked up by consignees. The decision giving effect to those terms thus is not contrary to any principle of contract law.

The issue of plaintiff's physical damage was included in Sea-Land's pre-trial contentions and was tried without objection. The decision is not in conflict with any authority as to the controlling effect of a pre-trial order.

The decision below applied settled law to facts found on disputed evidence, and is of no interest to anyone except these litigants.

ARGUMENT

Applicable Law

The petitioner complains that the lower courts should not have applied federal law. Petitioner suggests that state law should have been applied because, as recited in the pre-trial order, the district court has diversity jurisdiction. But the action stated in the complaint and in the pre-trial order was for violation of an ocean bill of lading, a maritime contract governed by federal admiralty law, *The New Jersey Steam Nav. Co. v. The Merchants' Bank,* 47 U.S. (6 How.) 344 (1848). The maritime contract of carriage set out in the ocean bill of lading continued to govern the relationship of cargo owner and carrier after discharge of the cargo. *David Crystal, Inc. v. Cunard Steam-Ship Co.,* 339 F.2d 295 (2d Cir. 1964), *cert. denied,* 380 U.S. 976 (1965). Thus, federal maritime law is applicable regardless of the forum. *Pope & Talbot, Inc. v. Hawn,* 346 U.S. 406 (1953). Petitioner cites no authority to the contrary.

In any event, there is no reason to believe any different result would have been reached if Texas law had been applied. *Cf. Corrigan Dispatch Co. v. Casa Guzman, S.A.,* 696 F.2d 359 (5th Cir. 1983).

House-to-House

Petitioner points out that its cargo might have been delivered on Friday if the containers had not been unloaded by Sea-Land and asserts that this unloading from the transportation containers was a violation of its "house-to-house" bill of lading agreement. Petitioner argues that the courts below have given effect to terms printed in a bill of lading form and set out in a published tariff though

in conflict with type-written provisions of the agreement, in violation of established contract law. But the courts below found that there *was* no conflict between the typed "house-to-house" provision and the printed bill of lading and published tariff terms describing procedures to be followed by Sea-Land in cases where the cargo receiver failed to follow the "house-to-house" arrangement. [Pet. 9a, 14a-15a] The result was clearly supported by the evidence.

There is nothing in this decision in conflict with that of any other court. The only case cited by petitioner as evidence of an inter-circuit conflict on this point is *B. Elliott (Canada) Ltd. v. John T. Clark & Son.*, 704 F.2d 1305 (4th Cir. 1983), which involved container cargo damaged after discharge from a ship and before delivery of the container to the consignee. The Fourth Circuit found the "pier-to-pier" designation inconsistent with bill of lading provisions that the ship was no longer responsible for the cargo after discharge from the ship and gave effect to the stamped "pier-to-pier" provision. That decision is in no way analogous to the decisions below that Sea-Land's printed requirements were reasonable and not inconsistent with its "house-to-house" agreement.

Damaged Cargo

With respect to its claim for physical damages, petitioner attempts to read the decisions below as sustaining a defense not included in the pre-trial order, to its prejudice, apparently arguing that there was no issue before the district court as to petitioner's physical damages. But the pre-trial order clearly recited Sea-Land's contention that the plaintiff was not damaged. [Pet. 23a] In any event, the physical damage issue was fully tried

without this objection's being raised, the petitioner itself calling three witnesses to testify on the point [Pet. 11a-12a], which forecloses the complaint presently made. FRCP 15(b); *Bradford Audio Corporation v. Pious,* 392 F.2d 67 (2d Cir. 1968); *Esquire Restaurant, Inc. v. Commonwealth Ins. Co. of N.Y.,* 393 F.2d 111 (7th Cir. 1968); *Knudson v. Boren,* 261 F.2d 15 (10th Cir. 1958). The decisions below denying the petitioner any recovery for physical damages cannot be read to conflict with other cases or the established law.

Summary

In short, this case involves nothing but the application of well settled principles of law to facts found by the district court on disputed evidence. It was correctly decided, and it cannot be of importance to anyone except these litigants.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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